

## REMARKS/ARGUMENTS

The following remarks are submitted in response to the Final Office Action mailed May 16, 2007, setting a three-month shortened statutory period for response ending August 16, 2007. With this Amendment claims 15-23 have been cancelled. Claims 1, 3-12 and 14 remain pending in the Application. Reconsideration, examination and allowance of all pending claims are respectfully requested.

### 35 U.S.C. § 102(b) Rejections

Claims 1, 3-12 and 14-23 are rejected under 35 U.S.C. §102(b) as being anticipated by *Hermann et al.* (U.S. Patent 5,527,326). Applicants respectfully traverse this rejection. In order to anticipate, the cited reference must disclose each and every claimed element. *Hermann et al.* fail to do so.

In paragraph 2 of the Office Action the Examiner asserts that *Herman et al.* discloses the claimed invention. *Hermann et al.* appear to illustrate in figures 5-8 and 12-14 a device with a first and second strut disposed about a shaft. The proximal ends of the first and second struts are slidably attached to the shaft.

In contrast, independent claims 1 and 11 describe a medical device “[w]herein the proximal end of the first strut and the proximal end of the second strut are fixedly attached to the shaft.” In other words, the claimed invention does not have struts with a slidable proximal end. The Examiner argues in paragraph 3 of the Office Action that “[g]iven their broadest reasonable interpretation, the proximal end of the first and second struts (14, 28) of *Hermann et al.* are clearly considered being attached to the shaft (16).” But, that is not the distinction that Applicants are making, rather Applicants are claiming

“fixedly” attached struts versus “slidably” attached struts as disclosed by Hermann et al. As Applicants state in the specification (last paragraph of page 2 and first paragraph of page 3), there is a marked distinction between a strut that is “fixedly” attached to a shaft and a strut that is “slidably” attached to shaft.

For at least the reasons stated above, Applicants assert that independent claims 1 and 11 are not anticipated under 35 U.S.C. §102(b) by *Hermann et al.*, because the *Hermann et al.* reference does not discloses struts fixedly connected at the proximal end of the shaft. Accordingly, since claims 3-10 depend from claim 1, and claims 12 and 14 depend from claim 11, and include other significant elements, Applicants believe these claims are also patentable over the cited references.

### **35 U.S.C. § 103(a) Rejections**

In paragraph 2 of the Office Action, the Examiner rejects claims 1, 3-12 and 14-23 under 35 U.S.C. § 103(a) as being unpatentable over *Hermann et al.* in view of *Bates et al.* (U.S. Patent 6,468,291).

For reasons similar to that discussed above, Applicants respectfully assert that claims 1, 3-12 and 14 are patentable over *Hermann et al.* in view of *Bates et al.*. The *Hermann et al.* reference does not discloses a device wherein the distal end of the struts is slidable and the proximal end of the struts is fixedly attached to a shaft, as stated in independent claims 1 and 11. Likewise, *Bates et al.* does not appear to cure the deficiencies of *Hermann et al.*. Thus, since the cited references do not teach each and every element, Applicants respectfully submit that claims 1, 3-12 and 14 are patentable over the cited references.

**Conclusion**

Reexamination and reconsideration are respectfully requested. It is respectfully submitted that the claims are now in condition for allowance, and issuance of a Notice of Allowance in due course is requested. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

HAROLD F. CARRISON ET AL.

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By their Attorney,

Glenn M. Seager, Reg. No. 36,926  
CROMPTON, SEAGER & TUFTE, LLC  
1221 Nicollet Avenue, Suite 800  
Minneapolis, Minnesota 55403-2420  
Tel: (612) 677-9050